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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

SEP 23 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Advanced Television Systems and) MM Docket No. 87-268
Their Impact Upon the Existing)
Television Broadcast Service)

**PARTIAL OPPOSITION TO PETITION FOR PARTIAL RECONSIDERATION OF
COSMOS BROADCASTING CORPORATION**

Pacific and Southern Company, Inc. ("P&S"), by counsel and pursuant to Section 1.429 of the Commission's Rules, hereby submits its Partial Opposition to the Petition for Partial Reconsideration and Supplement to Petition for Reconsideration (collectively "Petition") filed by Cosmos Broadcasting Corporation ("Cosmos") in the above-captioned proceeding.¹ For the reasons set forth below, certain of the actions requested by Cosmos do not comply with Commission policies or with the rules adopted by the Commission, and Cosmos has presented no justification for a waiver of such policies and rules. Therefore, to the extent discussed below, Cosmos' Petition is without foundation and should be dismissed or denied.

¹ Cosmos filed its initial Petition for Partial Reconsideration on June 13, 1997. Pursuant to Commission authority, it filed a Supplement to that pleading on August 22, 1997 (See 62 Fed Reg. 47207). The instant Opposition refers to these two pleadings collectively as the "Petition."

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Cosmos is the licensee of Station WSFA(TV), Montgomery, Alabama.² In its Sixth Report and Order in the above-captioned proceeding, the Commission assigned Station WSFA to digital Channel 57.³ In its Petition, Cosmos requests that the Commission reassign Station WSFA to digital Channel 11. Cosmos maintains that assignment of Station WSFA to a "core" digital channel will allow Cosmos to contain costs and facilitate spectrum recovery. Petition at 11.

P&S is the licensee of Station WXIA(TV), analog Channel 11 in Atlanta, Georgia. According to Cosmos' analysis, assignment of digital Channel 11 to Station WSFA would cause short spacing and increased interference to three current NTSC stations, including WXIA.⁴ Cosmos states that such short spacing will be "minimal" in nature, and therefore urges that the Commission grant its requested reassignment.⁵

² Cosmos is the licensee of a total of eight television broadcast stations, and in its Petition, Cosmos requests changes in the Commission's DTV allotments, or other rule changes, with respect to each of the Cosmos stations. The instant Opposition speaks only to the requested changes with respect to WSFA.

³ Sixth Report and Order, MM Docket No. 87-268, FCC 97-115 (April 3, 1997) ("Sixth Report and Order").

⁴ The other stations identified by Cosmos are WFSU-TV, Tallahassee, Florida and WTOK-TV, Meridian, Mississippi.

⁵ With respect to WXIA, the amount of new interference, according to Cosmos, would affect 21,414 persons over 949 square kilometers. Supplement to Petition for Reconsideration, Attachment D at 5. Although Cosmos states that this level of increased interference is "minimal," we note that Cosmos' definition of "minimal" interference is quite different when it affects its own stations. Elsewhere in the Supplement, Cosmos complains about short spacing to

Continued on following page

On its face, the Cosmos Petition fails to comply with Commission rules and policies with respect to a request for reassignment of a DTV channel to Station WSFA. Specifically, Section 73.623(c) provides that requests for modification of the DTV allotments "must demonstrate that there is no increase in the amount of interference caused to any other....analog TV broadcast station." Similarly, Section 73.623(d) of the Rules states, in part, that "no petition to add a new channel to the DTV Table of Allotments will be accepted unless it ... meets the [listed] requirements for geographic spacing with regard to all other DTV stations, DTV allotments and analog TV stations." Cosmos' own engineering analysis indicates that its proposed new DTV channel would violate these bright-line requirements for at least three stations. Accordingly, Cosmos' petition is unacceptable for filing under the Commission's rules and it should be dismissed summarily. See attached Exhibit E, Engineering Statement.

Cosmos has failed to request a waiver of these clear Commission rules and policies, or otherwise to show good cause why the Commission should ignore its spacing and non-interference requirements in the case of WSFA. The sole justification provided for the reassignment of Station WSFA to digital Channel 11 is that this channel is in the "core" DTV spectrum, while

Continued from previous page

one of its allotments that would affect 2,750 persons over 260 square kilometers. Supplement to Petition for Reconsideration at 5.

Channel 57 is not.⁶ Although Cosmos' concern regarding the channel assignment of its digital operations outside the core spectrum is not unreasonable, the Commission already has indicated that it intends to take steps to deal with such issues in the future.⁷ However, the Commission has not indicated that its resolution of core spectrum issues would be handled by ignoring its bright-line spacing and non-interference rules and the resultant creation of interference to other broadcast stations, analog or digital.

⁶ In its June 13, 1997 filing, Cosmos makes reference to short-spacing problems with its Channel 57 assignment. Petition at 11. However, nowhere in that pleading or in the supplemental filing are any short-spaced stations identified.

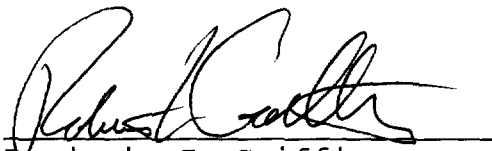
⁷ See, e.g., Sixth Report and Order at ¶¶ 82 - 84.

Conclusion

Therefore, to the extent discussed and for the reasons set forth herein, Cosmos' Petition for Partial Reconsideration and the Supplement thereto in the above-captioned matter should be dismissed or denied.

Respectfully submitted,

**PACIFIC AND SOUTHERN COMPANY,
INC.**

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September 23, 1997

**EXHIBIT E
ENGINEERING STATEMENT
IN SUPPORT OF AN OPPOSITION
TO A PETITION FOR RECONSIDERATION
OF THE SIXTH REPORT AND ORDER
IN MM DOCKET NO. 87-268**

This statement was prepared on behalf Pacific and Southern Broadcasting, Inc. licensee of television broadcast station WXIA-TV Channel 11 Atlanta, Georgia. It supplies technical information in support of an opposition to a petition for reconsideration of the DTV Table of Allotments in the Sixth Report and Order in MM Docket No. 87-268. The Petition was filed with the Commission by Cosmos Broadcasting Corporation and in part, proposes the substitution of DTV Channel 11 in lieu of the assigned DTV Channel 57 for pairing with Cosmos's NTSC operation of WFSB-TV Channel 12 at Montgomery, Alabama. The substitution of DTV Channel 11 for DTV Channel 57 at Montgomery as proposed by Cosmos will cause new interference to the Channel 11 NTSC operations of WXIA-TV Atlanta, Georgia, WTOK-TV Meridian, Mississippi and WFSU-TV Tallahassee, Florida.

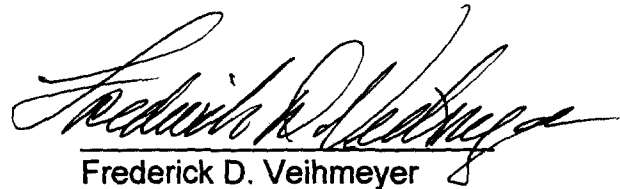
The Rules adopted by the Commission in the Sixth Report and Order, specifically Section 73.623(c) describe the minimum technical criteria for modification of DTV allotments included in the initial DTV Table of Allotments. Section 73.623(c) states that, ("...no petition to modify a channel allotment included in the initial DTV Table... will be accepted unless it shows compliance with the requirements of this paragraph".) To wit Section 73.623(c(2)) states that the petitioner, "....must demonstrate that there is no increase in the amount of interference caused to any other DTV broadcast stations, DTV allotment, or analog TV broadcast station." Section 73.623(c)(2) further states that the Longley-Rice methodology provided in OET Bulletin No. 69 should be employed in evaluating interference. Section 73.623(d) provides minimum geographic spacing requirements for DTV allotments not included in the initial DTV Table of allotments.

The engineering statement attached to Cosmos's Petition for Reconsideration describes geographic spacing deficiencies of 41.1 kilometers with WFSU-TV, 31.9 kilometers with WTOK-TV and 12.1 kilometers with WXIA-TV.

Cosmos's Engineers state that they employed the methodology described in OET Bulletin No. 69 and determined that the proposed substitution of Channel 11 for Channel 57 at WFSU-TV will cause interference to the analog operation of WFSU-TV in an area of 1,667 km² with a population of 31,934, to the analog operation of WTOK-TV in an area of 2,230 km² with a population of 10,833 and to the analog operation of WXIA-TV in an area of 949 km² with a population of 21,414.

The supplemental engineering data prepared in support of the Cosmos petition for reconsideration is clearly in contravention of Section 73.623 of the Commission's Rules, adopted in the Sixth Report and Order. The proposed substitution of Channel 11 for Channel 57 at WFSU will cause new interference to three existing NTSC television broadcast stations affecting a total area of 4,846 km² with a population of 64,181.

Respectfully submitted,
LOHNES AND CULVER


Frederick D. Veihmeyer

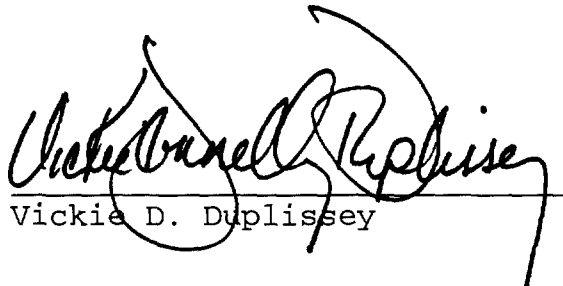
September, 1997

CERTIFICATE OF SERVICE

I, Vickie D. Duplissey, a secretary with the law firm of Reed Smith Shaw & McClay LLP, do hereby certify that this 23rd day of September, 1997, I have caused the foregoing "Partial Opposition to Petition for Partial Reconsideration" to be delivered via first class mail, postage prepaid, to the following:

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